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EXAMINER

PHAN, JOSEPH T

ART UNIT PAPER NUMBER

2645

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/805,187

Applicant(s)

TUTTLE, ROBERT J.

Examiner

Joseph T Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8 and 10-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 11, and 20 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 line 18 and claim 11 line 16 recites "repeating steps...for echo cancellation signals". It is unclear and not known when the steps are repeated as the limitation merely recites "repeating steps...for echo cancellation signals" and therefore makes the claim indefinite. The system could repeat the steps upon a variety of actions including "detecting the silence of echo cancellation signals" or "detecting the presence of signals" which are different embodiments. Appropriate correction is required.

Claims 1, 11, and 20 lines 3, 15-16, and 18-19 recites "*monitoring the recorder/answering machine for echo cancellation signals...*" and "*continuing to play the recorded message if there are no echo cancellation signals*".

These phrases makes the claims confusing and unclear because one skilled in the art understands that there is no signal once an echo canceling device cancels the echo signal. The phrase "echo cancellation signal" is contradictory in itself and makes the claim indefinite. Appropriate correction is required to clarify the claims.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

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unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6, 8, and 10-20 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of Tuttle U.S. Patent #6,324,262(hereinafter Tuttle-262) in view of Cox et al., Patent #6,233,319. Because claims in pending application 09/805,187 are broader than the ones in the Tuttle Patent, *In re Van Ornum and Stang*, 214 USPQ T61, broad claims in the continuation application are rejected as obvious double patenting over previously patented narrower claims.

As the phrase "echo cancellation signals" is used in the current application, in view of the 112 rejection above, the pending claims is merely monitoring for echo cancellation signals in which no action is performed because of the monitoring. It would nonetheless have been obvious to modify Tuttle-262 to include "echo cancellation signals"

Tuttle-262 teaches the pending claims as recited but is merely silent on disclosing 'echo cancellation signals'. Cox teaches monitoring for echo cancellation signals(col.3 lines 47-53) and therefore shows that the method monitoring and canceling of echo signals is old and well known in the art.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1-6, 8, and 10-20 rejected under 35 U.S.C. 102(b) as being anticipated by Caldwell, Patent #5,644,624.**

5. **Claims 1-6, 8, and 10-20 rejected under 35 U.S.C. 102(e) as being anticipated by Cox et al., Patent #6,233,319.**

Regarding claim 1, Cox teaches an automated method of delivering a recorded information message via a telephone dialing system to an automated recorder while simultaneously monitoring the recorder for echo cancellation signals, comprising the steps of:

(a) (i) placing a telephone call to a telephone number of an answering machine, the telephone number being selected from a database of telephone numbers(col.2 lines 45-48);

(a) (ii) detecting a signal being emitted from the answering machine;

(a) (iii) under a two tiered method, determining if the detected signal is either a continuous noise signal tone over a first time period or is a period of silence over a

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second time period, the first time period being different from the second time period (col.3 lines 7-53);

(b)(i) playing the recorded information message onto the answering machine after a third time period following the first time period of the continuous noise signal tone(166-170 Fig.3 and col.2 lines 15-25);

(b)(ii) playing the recorded information message onto the answering machine after a forth time period following the second time period of the period of silence(col.3 lines 34-53);

(c) monitoring the answering machine for echo cancellation signals while simultaneously playing the recorded message (172-176 Fig.3 and col.3 lines 7-53);

(d) repeating steps (b)(i),(b)(ii) for echo cancellation signals(col.2 lines 18-25); and

(e) continuing to play the recorded message if there are no echo cancellation signals, wherein the method overcomes problems with premature launching of the recorded message so that the recorded message is launched closer to the time when the answering machine begins recording, and the recorded message is delivered in a nontruncated form, so the recorded message is recorded completely by the answering machine (col.3 line 7-col.4 line 40); and

(f) repeating the above steps until at least a pass through of all the telephone numbers from the database have been called(176-178 Fig.3 and col.4 lines 11-41).

Regarding claim 2, Cox teaches the automated method of delivering the recorded information message of claim 1, wherein the echo cancellation signals includes: sounds being emitted from the answering machine (col.4 lines 3-10).

Regarding claim 3, Cox teaches the automated method of delivering the recorded information message of claim 1, wherein step(d) further includes: repeating step (b) for less than three sound occurrences (col.2 lines 20-24; a message replayed just once is less than three sound occurrences).

Regarding claim 4, Cox teaches the automated method of delivering the recorded information message of claim 1, wherein step(e) further includes: continuing to play the recorded message if there are at least three echo cancellation signals(col.2 lines 20-24).

Regarding claim 5, Cox teaches the automated method of delivering the recorded information message of claim 1, further comprising the steps of-
(f) removing echo signal monitoring and continuing to play the recorded message to completion (col.3 lines 34-54).

Regarding claim 6, Cox teaches the automated system for delivering recorded information messages of claim 1, wherein the answering machine of step(a) is chosen from one of:
a tape machine, a digital machine, a pager, a telephone provider voice/memory call machine, and a cellular machine(42 Fig.1, col.2 lines 40-44, and col.4 lines 54-64; it is understood that at least one of these machines can be the recipient).

Regarding claim 8, Cox teaches the method of claim 1, wherein the selected time period of the solid tone emission is approximately one second (col.3 lines 6-24).

Regarding claim 10, Cox teaches the method of claim 9, wherein the selected time period of the solid tone emission is approximately one second, and the subsequent

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time period for the silent response is approximately two seconds (col.3 lines 7-53).

Regarding claims 11 and 20, Cox teaches an automated method and means of delivering a recorded information message via a telephone dialing system to an automated recorder while simultaneously monitoring the recorder for echo cancellation signals, comprising the steps of:

(a) (i) placing a telephone call to an answering machine;

(a) (ii) under a two tier method, alternatively detecting for both a continuous solid tone being emitted from the answering machine over a first time period or for a silence response from the answering machine over a second time period, wherein the first time period is different from the second time period(*col.3 lines 7-53 and col.4 lines 21-41; Cox does detect a tone for a selected time period[see col.3 lines 6-24 and lines 43-53; silence OR energy condition(i.e. tone) of a predetermined threshold. It is understood and well-known that answering machines play an outgoing greeting message(speech) followed by a beep(energy) to begin recording (this is a standard and a well-known feature of answering machines which Cox discloses in col.3 lines 38-53; One skilled in the art of answering machines understands the meaning behind the three types of conditions disclosed by Cox: speech(OGM or live person), energy(tone), then silence];*

(b)(i) playing a recorded information message onto the answering machine, following a third time period from the first time period of the continuous solid tone(166-170 Fig.3 and col.2 lines 15-25);

(b)(ii) playing the recorded information message onto the answering machine after a forth time period following the second time period of the period of silence(col.3 lines 34-

53);

(c) monitoring the answering machine for echo cancellation signals while simultaneously playing the recorded message, repeating steps (b)(i),(b)(ii) for echo cancellation signals(col.2 lines 18-25), and

(e) continuing to play the recorded message if there are no echo cancellation signals, wherein the method overcomes problems with premature launching of the recorded message so that the recorded message is launched closer to the time when the answering machine begins recording, and wherein the recorded message is delivered in a nontruncated form(col.3 lines 7-53).

Regarding claim 12, Cox teaches the method of claim 11 wherein the first time period of the solid tone emission is approximately one second and the second time period for the silent response is approximately two seconds (col.3 lines 7-53).

Regarding claim 13, Cox teaches the method of claim 11 further comprising the step of:

(a)(iii) detecting for a subsequent silence response over a subsequent time period after expiration of the first time period for the detection of the solid tone emission from the answering machine, the subsequent time period being different from the first time period(col.3 lines 7-53).

Regarding claim 14, Cox teaches the method of claim 13 wherein the first time period is approximately one second, and the subsequent time period is approximately two seconds(col.3 lines 7-53).

Regarding claim 15, Cox teaches the method of claim 11, further comprising the

step of:

(a)(iii) detecting for a subsequent silence response over a subsequent time period after expiration of the second time period for the detection of the silence response from the answering machine, the subsequent time period being different from the second time period(col.3 lines 7-53).

Regarding claim 16, Cox teaches the method of claim 15, wherein the second time period is approximately two seconds and the subsequent time period is approximately one second(col.3 lines 7-53 and col.4 lines 21-41).

Regarding claim 17, Cox teaches the method of claim 11, further comprising the steps of:

(a)(iii) detecting for a first subsequent silence response over a first subsequent time period after expiration of the first time period for the detection of the solid tone emission from the answering machine, the first subsequent time period being different from the first time period; and detecting for a second subsequent silence response over a second subsequent time period after expiration of the second time period for the detection of the silence response from the answering machine, the second subsequent time period being different from the second time period(col.3 lines 7-53 and col.4 lines 21-41).

Regarding claim 18, Cox teaches the method of claim 17, wherein the first time period is approximately one second and the second time period is approximately two seconds(col.3 lines 7-53 and col.4 lines 21-41).

Regarding claim 19, Cox teaches the method of claim 18, wherein the first subsequent time period is approximately two seconds, and the second subsequent time period is approximately one second(col.3 lines 7-53 and col.4 lines 21-41).

3. Claims 1-6, 8, and 10-20 rejected under 35 U.S.C. 102(b) as being anticipated by Caldwell, Patent #5,644,624.

Regarding claim 1, Caldwell teaches an automated method of delivering a recorded information message via a telephone dialing system to an automated recorder while simultaneously monitoring the recorder for echo cancellation signals(col.6 lines 47-61), comprising the steps of:

(a)(i) placing a telephone call to a telephone number of an answering machine, the telephone number being selected from a database of telephone numbers(col.6 lines 1-10);

(a)(ii) detecting a signal being emitted from the answering machine, under a two tiered method, determining if the detected signal is either a continuous noise signal tone over a first time period or is a period of silence over a second time period, the first time period being different from the second time period (col.8 lines 39-64);

(b)(i) playing the recorded information message onto the answering machine after a third time period following the first time period of the continuous noise signal tone(col.8 lines 39-64);

(b)(ii) playing the recorded information message onto the answering machine after a

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forth time period following the second time period of the period of silence(col.8 lines 39-64);

(c) monitoring the answering machine for echo cancellation signals while simultaneously playing the recorded message (col.6 lines 47-49, col.8 lines 39-64);

(d) repeating steps (b)(i),(b)(ii) for echo cancellation signals(Fig.3 and col.8 lines 39-64); and

(e) continuing to play the recorded message if there are no echo cancellation signals, wherein the method overcomes problems with premature launching of the recorded message so that the recorded message is launched closer to the time when the answering machine begins recording, and the recorded message is delivered in a nontruncated form, so that the recorded message is recorded completely by the answering machine (col.8 lines 39-64); and

(f) repeating the above steps until at least a pass through of all the telephone numbers from the database have been called(Fig.3).

Regarding claim 2, Caldwell teaches the automated method of delivering the recorded information message of claim 1, wherein the echo cancellation signals includes: sounds being emitted from the answering machine (col.7 lines 1-20 and col.8 lines 39-64).

Regarding claim 3, Caldwell teaches the automated method of delivering the recorded information message of claim 1, wherein step(d) further includes: repeating step (b) for less than three sound occurrences (fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Regarding claim 4, Caldwell teaches the automated method of delivering the recorded information message of claim 1, wherein step(e) further includes: continuing to play the recorded message if there are at least three echo cancellation signals(fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Regarding claim 5, Caldwell teaches the automated method of delivering the recorded information message of claim 1, further comprising the steps of-
(f) removing echo signal monitoring and continuing to play the recorded message to completion (fig.3 and col.7 lines 1-40 and col.8 lines 39-64).

Regarding claim 6, Caldwell teaches the automated system for delivering recorded information messages of claim 1, wherein the answering machine of step(a) is chosen from one of:
a tape machine, a digital machine, a pager, a telephone provider voice/memory call machine, and a cellular machine(fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Regarding claim 8, Caldwell teaches the method of claim 1, wherein the selected time period of the solid tone emission is approximately one second (fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Regarding claim 10, Caldwell teaches the method of claim 9, wherein the selected time period of the solid tone emission is approximately one second, and the subsequent time period for the silent response is approximately two seconds (fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Regarding claims 11 and 20, Caldwell teaches an automated method and means of delivering a recorded information message via a telephone dialing system to an

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automated recorder while simultaneously monitoring the recorder for echo cancellation signals(col.6 lines 47-49), comprising the steps of:

(a) (i) placing a telephone call to an answering machine (col.6 lines 1-10);

(a) (ii) under a two tier method alternatively detecting for both a continuous solid tone being emitted from the answering machine over a first time period or for a silence response from the answering machine over a second time period, wherein the first time period is different from the second time period(fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

(b) playing the recorded information message onto the answering machine, following a third time period from the first time period of the continuous solid tone(col.8 lines 39-64);

(b)(ii) playing the recorded information message onto the answering machine after a forth time period following the second time period of the period of silence(col.8 lines 39-64); (c) monitoring the answering machine for echo cancellation signals while simultaneously playing the recorded message, (d) repeating steps (b)(i),(b)(ii) for echo cancellation signals, and

(e) continuing to play the recorded message if there are no echo cancellation signals, wherein the method overcomes problems with premature launching of the recorded message so that the recorded message is launched closer to the time when the answering machine begins recording, and wherein the recorded message is delivered in a nontruncated form, so that the recorded message is recorded completely by the answering machine(fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Regarding claim 12, Caldwell teaches the method of claim 11 wherein the first time period of the solid tone emission is approximately one second and the second time period for the silent response is approximately two seconds (fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Regarding claim 13, Caldwell teaches the method of claim 11 further comprising the step of:

(a)(iii) detecting for a subsequent silence response over a subsequent time period after expiration of the first time period for the detection of the solid tone emission from the answering machine, the subsequent time period being different from the first time period(fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Regarding claim 14, Caldwell teaches the method of claim 13 wherein the first time period is approximately one second, and the subsequent time period is approximately two seconds(fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Regarding claim 15, Caldwell teaches the method of claim 11, further comprising the step of:

(a)(iii) detecting for a subsequent silence response over a subsequent time period after expiration of the second time period for the detection of the silence response from the answering machine, the subsequent time period being different from the second time period(fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Regarding claim 16, Caldwell teaches the method of claim 15, wherein the second time period is approximately two seconds and the subsequent time period is approximately one second(fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Regarding claim 17, Caldwell teaches the method of claim 11, further comprising the steps of:

(a)(iii) detecting for a first subsequent silence response over a first subsequent time period after expiration of the first time period for the detection of the solid tone emission from the answering machine, the first subsequent time period being different from the first time period; and detecting for a second subsequent silence response over a second subsequent time period after expiration of the second time period for the detection of the silence response from the answering machine, the second subsequent time period being different from the second time period(fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Regarding claim 18, Caldwell teaches the method of claim 17, wherein the first time period is approximately one second and the second time period is approximately two seconds(fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Regarding claim 19, Caldwell teaches the method of claim 18, wherein the first subsequent time period is approximately two seconds, and the second subsequent time period is approximately one second(fig.3 and col.7 lines 1-20 and col.8 lines 39-64).

Response to Arguments

6. Applicant's arguments with respect to claims 1-6, 8, 10-20 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments are not persuasive as Caldwell can determine if the detected signal is either a continuous noise signal tone over a first time period or is a period of silence over a second time period, the first time period being different from the

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second time period(col.8 lines 46-64; it is understood that Caldwell can determine if the signal is a tone(beep) or a period of silence which the silence period is obviously a longer time period than a beep). Cox can also determine a tone or silence that have two different time periods(col.3 lines 13-20; noise or energy is understood as a tone in the answering machine art).

Regarding applicant's argument that full faith and credit should be given to a previously cited reference(Cox) in a prior patented case and case law Amgen Inc. v. Hoechst Marion Roussel, Examiner again reminds applicant that this issue is not applicable in the current application for several reasons but mainly because the case law is referring to if two different examiners has worked on the same application, then full faith and credit should be given to previous work performed. It is obvious that the current application is different than the patented case. And therefore, the current examiner is able to interpret the current claims independent of the patented case. Furthermore, the claims in the patented case are narrower than the current pending claims.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph T Phan whose telephone number is 703-305-3206. The examiner can normally be reached on M-TH 9:00-6:30, in every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on 703-305-4895. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JTP
March 16, 2005



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